

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JESSICA C.,

Plaintiff,

V.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. C20-5737 RSM

ORDER AFFIRMING DEFENDANT'S DENIAL OF BENEFITS

Plaintiff, the mother of minor child Z.C.C.,¹ seeks review of the denial of an application for Supplemental Security Income Benefits. Plaintiff contends the ALJ erred by misevaluating the opinions of non-examining psychologists Grant Gilbert, Ph.D., and Richard Borton, Ph.D., teacher LaShonte Simon, treating physician Martin Cieri, M.D., and school counselor Caitlin Brown. Dkt. 18, pp. 1–2. As discussed below, the Court **AFFIRMS** the Commissioner’s final decision and **DISMISSES** the case with prejudice.

BACKGROUND

Plaintiff is 10 years old. *See* Admin. Record (“AR”) (Dkt 16), p. 99. On October 24, 2017, Plaintiff applied for benefits, alleging disability as of October 1, 2014. AR 99–100, 186–

¹ Although the minor child appears through her mother Jessica C., “Plaintiff” will refer to the minor child in this Order.

1 91. Plaintiff's applications were denied initially and on reconsideration. AR 99–118. After the
2 ALJ conducted a hearing on April 2, 2019, the ALJ issued a decision finding Plaintiff not
3 disabled. AR 36–97. In relevant part, the ALJ found Plaintiff had a severe impairment of
4 attention deficit hyperactivity disorder. AR 39. The ALJ found Plaintiff had no limitation in
5 moving about and manipulating objects; less than marked limitations in acquiring and using
6 information, interacting and relating with others, the ability to care for herself, and health and
7 physical well-being; and a marked limitation in attending and completing tasks. AR 45–51.

8 The Appeals Council denied Plaintiff's request for review, making the ALJ's decision the
9 Commissioner's final decision. AR 1–4.

DISCUSSION

11 An individual under the age of 18 is disabled if she has a medically determinable physical
12 or mental impairment that results in marked or severe functional limitations, and the limitations
13 can be expected to result in death or last for a continuous period of at least 12 months, provided
14 the individual is not engaging in substantial gainful activity. 20 C.F.R. § 416.906. The Social
15 Security regulations set forth a three-step sequential evaluation process for determining whether
16 a child is disabled. *See* 20 C.F.R. § 416.924(a). At step one, the ALJ must determine whether
17 the claimant is engaging in substantial gainful activity. *Id.* If the claimant is not, the ALJ
18 proceeds to step two, at which point he or she must determine whether the claimant has a
19 medically determinable impairment or combination of impairments that is severe. *Id.* If the
20 claimant has a severe impairment or combination of impairments, the ALJ proceeds to step three,
21 at which point he or she must determine whether the claimant has an impairment that meets,
22 medically equals, or functionally equals a listed impairment in 20 C.F.R. § 404, Subpart P,
23 Appendix 1 (the “Listings”). *Id.* An impairment functionally equals a Listing if the child has

1 marked limitations in two areas of functioning or an extreme limitation in one area. 20 C.F.R. §
2 416.926a(a). The six areas of functioning, or domains, are: (1) acquiring and using information,
3 (2) attending and completing tasks, (3) interacting and relating with others, (4) moving about and
4 manipulating objects, (5) caring for oneself, and (6) health and physical well-being. 20 C.F.R. §
5 416.926a(b)(1).

6 This Court may set aside the Commissioner's denial of Social Security benefits only if
7 the ALJ's decision is based on legal error or not supported by substantial evidence in the record
8 as a whole. *Trevizo v. Berryhill*, 871 F.3d 664, 674 (9th Cir. 2017). The ALJ is responsible for
9 evaluating evidence, resolving conflicts in medical testimony, and resolving any other
10 ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). Although
11 the Court is required to examine the record as a whole, it may neither reweigh the evidence nor
12 substitute its judgment for that of the ALJ. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir.
13 2002). When the evidence is susceptible to more than one interpretation, the ALJ's
14 interpretation must be upheld if rational. *Burch v. Barnhart*, 400 F.3d 676, 680–81 (9th Cir.
15 2005). This Court "may not reverse an ALJ's decision on account of an error that is harmless."
16 *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

17 **A. The ALJ Did Not Err in Evaluating the Opinions of Dr. Gilbert and Dr. Borton**

18 Plaintiff argues the ALJ erred in evaluating the opinions of non-examining psychologists
19 Dr. Gilbert and Dr. Borton. Dkt. 18, p. 3. Dr. Gilbert opined Plaintiff had a marked limitation in
20 the domain of attending and completing tasks, a less than marked limitation in acquiring and
21 using information, and no or less than marked limitations in the remaining four domains. AR
22 103–04. Dr. Borton gave a similar opinion, finding Plaintiff had a marked limitation in the
23 domain of attending and completing tasks, no limitation in acquiring and using information, and

1 no or less than marked limitations in the remaining four domains. AR 113–14.

2 The ALJ found the opinions of Dr. Gilbert and Dr. Borton persuasive. AR 43. As such,
3 the ALJ found Plaintiff had a marked limitation in the domain of attending and completing tasks,
4 but no other marked or extreme limitations. *See* AR 45–51.

5 Plaintiff contends the ALJ erred because these opinions “state[] that the claimant has a
6 less than marked limitation in the ability to acquire and use information, and the ALJ provides no
7 rationale supporting his failure to include a marked limitation in the ability to acquire and use
8 information, which would be directly impacted by her ability to attend and complete tasks.” Dkt.
9 18, p. 3. Plaintiff appears to be arguing that Dr. Gilbert and Dr. Borton should have opined
10 Plaintiff had a marked limitation in her ability to acquire and use information because they
11 opined Plaintiff had a marked limitation in her ability to attend and complete tasks. But Plaintiff
12 points to no evidence requiring such an outcome. Dr. Gilbert and Dr. Borton explicitly opined
13 Plaintiff had a less than marked limitation in the ability to acquire and use information. *See* AR
14 103, 113. That Plaintiff believes—without any substantive or evidentiary basis—these opinions
15 should have been different does not establish that they in fact should have been, or that the ALJ
16 unreasonably interpreted the evidence in accepting them as written. Plaintiff has therefore failed
17 to show the ALJ erred in evaluating Dr. Gilbert’s and Dr. Borton’s opinions. *See Ludwig v.*
18 *Astrue*, 681 F.3d 1047, 1054 (9th Cir. 2012) (citing *Shinseki v. Sanders*, 556 U.S. 396, 407–09
19 (2009)) (holding the party challenging an administrative decision bears the burden of proving
20 harmful error).

21 **B. The ALJ Did Not Err in Evaluating Ms. Simon’s Opinions**

22 Plaintiff argues the ALJ erred in evaluating the opinions of Plaintiff’s teacher, Ms.
23 Simon. Dkt. 18, pp. 3–4. Ms. Simon completed a teacher questionnaire rating Plaintiff’s

1 abilities as to specific activities within each domain. *See* AR 289–96. Ms. Simon rated each
2 activity as “No problem,” “A slight problem,” “An obvious problem,” “A serious problem,” or “A
3 very serious problem.” *See id.* Ms. Simon opined Plaintiff had no problem or a slight problem
4 for each activity within the domain of acquiring and using information. AR 290. Ms. Simon
5 opined Plaintiff had a very serious problem working without distracting herself or others in the
6 domain of attending and completing tasks, but no or a slight problem in the remaining activities
7 in that domain. AR 291. Ms. Simon opined Plaintiff had no problem, a slight problem, or an
8 obvious problem in the activities within the domain of interacting and relating with others. AR
9 292. Ms. Simon opined Plaintiff had no problem or a slight problem in the activities within the
10 domain of moving about and manipulating objects. AR 293. Ms. Simon opined Plaintiff had no
11 problem or a slight problem in the activities within the domain of caring for herself. AR 294.
12 Ms. Simon gave no opinion as to the health and physical well-being domain. AR 295.

13 The ALJ found Ms. Simon’s opinions persuasive. AR 44. The ALJ accordingly found
14 Plaintiff had a marked limitation only in attending and completing tasks, the only domain in
15 which Ms. Simon opined Plaintiff had a limitation that was more than an obvious problem. *See*
16 AR 290–95.

17 Plaintiff argues the ALJ should have interpreted Ms. Simon’s opinions differently
18 because they were unclear and contained conflicting statements. *See* Dkt. 18, pp. 3–4. But the
19 ALJ is the one empowered to evaluate the evidence and resolve any conflicts or ambiguities in it.
20 *Andrews*, 53 F.3d at 1039. Plaintiff fails to show the ALJ’s interpretation of Ms. Simon’s
21 opinions was irrational. The ALJ could reasonably have interpreted Ms. Simon’s opinions to
22 mean only activities that were more than an obvious problem, the middle of five possible
23 severity descriptions, were equal to marked or extreme limitations. If the evidence can support

1 more than one rational interpretation, the ALJ's rational interpretation must be upheld. *See*
 2 *Burch*, 400 F.3d at 680–81. Plaintiff has therefore failed to show the ALJ harmfully erred in
 3 evaluating Ms. Simon's opinions. *See Ludwig*, 681 F.3d at 1054 (citing *Shinseki*, 556 U.S. at
 4 407–09).

5 **C. The ALJ Did Not Err in Evaluating Dr. Cieri's and Ms. Brown's Opinions**

6 Plaintiff argues the ALJ erred in rejecting the opinions of Dr. Cieri and Ms. Brown. Dkt.
 7 18, pp. 4–6. Dr. Cieri opined Plaintiff had extreme limitations in attending and completing tasks,
 8 interacting and relating with others, and caring for herself. AR 701–02. He opined Plaintiff had
 9 no or slight limitations in the remaining domains. *Id.*

10 Ms. Brown opined Plaintiff had extreme limitations in attending and completing tasks.
 11 AR 706. She opined Plaintiff had marked limitations in interacting and relating with others. *Id.*
 12 Ms. Brown opined Plaintiff had moderate limitations in caring for herself. AR 707. Ms. Brown
 13 opined Plaintiff had no or slight limitations in the remaining domains. AR 706–07.

14 The ALJ found Dr. Cieri's and Ms. Brown's opinions unpersuasive. AR 43. The ALJ
 15 reasoned these opinions were inconsistent with Plaintiff's educational records, and Dr. Cieri's
 16 own observations. *Id.*

17 Plaintiff has again failed to show harmful error. *See Ludwig*, 681 F.3d at 1054 (citing
 18 *Shinseki*, 556 U.S. at 407–09). The ALJ reasonably interpreted the record in finding that “while
 19 [Plaintiff] does have some behavioral issues mostly relating to staying focused, she is
 20 academically on pace for her age.” AR 43. By the spring term of kindergarten, Plaintiff was
 21 meeting or approaching end of the year standards in all areas except “complet[ing] and
 22 return[ing] assigned homework on time,” which is reasonably covered by the marked limitation
 23 in attending and completing tasks. *See* AR 400–01. Plaintiff's teacher reported Plaintiff “met all

1 Kindergarten learning standards and goals.” AR 402. Plaintiff performed within at least the
2 average range in multiple areas, and she did not demonstrate eligibility for special education
3 services. *See* AR 642, 648–51, 654. The ALJ reasonably interpreted this evidence as
4 inconsistent with Dr. Cieri’s and Ms. Brown’s opinions.

5 The ALJ’s determination that Dr. Cieri’s opinions were inconsistent with Dr. Cieri’s own
6 observations does not withstand scrutiny, but the ALJ’s error in making that finding was
7 harmless. An error is harmless “where it is ‘inconsequential to the ultimate disability
8 determination.’” *Molina*, 674 F.3d at 1115 (quoting *Carmickle v. Comm’r, Soc. Sec. Admin.*,
9 533 F.3d 1155, 1162 (9th Cir. 2008)). The ALJ’s finding that Dr. Cieri’s and Ms. Brown’s
10 opinions were inconsistent with Plaintiff’s educational record remains valid regardless of the
11 ALJ’s error, and thus that error was harmless.

12 **CONCLUSION**

13 For the foregoing reasons, the Commissioner’s final decision is **AFFIRMED** and this
14 case is **DISMISSED** with prejudice.

15 DATED this 18th day of March, 2021.

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17 
18 RICARDO S. MARTINEZ
19 CHIEF UNITED STATES DISTRICT JUDGE
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